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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GUEST TEK INTERACTIVE ENTERTAINMENT LTD.,  
Petitioner,

v.

NOMADIX, INC.,  
Patent Owner.

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Case IPR2019-01191  
Patent 8,606,917

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PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY IN SUPPORT  
OF PETITION FOR *INTER PARTES* REVIEW

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## EXHIBIT LIST

<i>Exhibit No.</i>	<i>Description</i>
2001	Nomadix's Complaint for Breach of Contract
2002	[Redacted] Guest-Tek's Answer and Counterclaims
2003	Case Scheduling Order
2004	Claim Construction Order
2005	Guest-Tek's Supplemental Response to Nomadix's Interrogatory No. 6
2006	Declaration of Stuart G. Stubblebine, Ph.D.
2007	Stuart G. Stubblebine Consultant Curriculum Vitae
2008	Hague Certificate of Service of Complaint
2009	Stipulation to Reset Guest-Tek's Deadline to Respond to Complaint
2010	November 4, 2019 Email string from Steven Rocci to Doug Muehlhauser regarding conference of counsel
2011	June 7, 2019 Complaint for Breach of Contract, Case No. 2:19-cv-04980 (C.D. Cal)
2012	Excerpts, Opening Expert Report of Dr. Oded Gottesman

## I. THE BOARD SHOULD DENY THE PETITION

Petitioner cannot escape the inefficiencies created by the advanced stage of copending litigation—the full ramifications of which were well known to Petitioner when it filed the Petition two-and-a-half years after the district court litigation began.

Petitioner cannot escape three fundamental facts:

1. Patent Owner sued Petitioner in 2016 (“the October 2016 Action”), and Petitioner answered in September 2017 alleging invalidity of the ’917 patent.

2. Petitioner filed its Petition in June 2019 asserting three grounds of invalidity, and in the same month (and for the first time) asserted exactly the same three invalidity theories in the October 2016 Action.

3. When Petitioner filed its Petition in June 2019, it did so despite knowing that claim construction, fact discovery and expert discovery would all be complete before any institution decision on the Petition; and it did so despite knowing that a district court trial would commence ten months before any decision by the Board (if review were instituted).

In these circumstances, Petitioner’s delay weighs heavily in favor of the Board exercising its discretion under § 314(a) to deny institution.

### A. The record shows unexcused delay and no diligence in filing the Petition

Petitioner argues there was no delay in filing the present petition, and that Petitioner was diligent. Reply at 1-2. The record shows otherwise.

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